



Billing Code 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2013-N252]

[FF08ENV00-FXES11130800000-134]

**Proposed Low-Effect Habitat Conservation Plan for the Spring Mountain Raceway
Expansion Project, Pahrump, Nye County, Nevada**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application and request for comment.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), have received an application from Spring Mountain Raceway, LLC (applicant), for an incidental take permit under the Endangered Species Act of 1973, as amended. The requested 4-year permit would authorize the incidental take of the threatened Mojave desert tortoise on 120 acres of habitat associated with the construction of a raceway expansion project in Pahrump, Nye County, Nevada. The applicant would implement conservation measures to avoid, minimize, and mitigate effects of the proposed project's covered activities, as

described in the applicant's low-effect habitat conservation plan (HCP).

We request comments on the permit application, including the HCP, and our preliminary determination that the plan qualifies as a "low-effect" habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We explain the basis for this determination in our environmental action statement (EAS), which is also available for public review.

DATES: We must receive written comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: You may download a copy of the HCP, low-effect screening form and EAS, and related documents on the internet at <http://www.fws.gov/nevada>, or you may request copies of the documents by U.S. mail or phone (see below). Please address written comments to Edward D. Koch, State Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502. You may also send comments by facsimile to 775-861-6301. Please note that your information request or comment is in reference to the Low-Effect Habitat Conservation Plan for the Spring Mountain Raceway Expansion Project, Pahrump, Nye County, Nevada.

FOR FURTHER INFORMATION CONTACT: Jeri Krueger, HCP Coordinator, at the

above address, or by calling 775-861-6300.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the permit application, HCP, and EAS from the individual listed under **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Nevada Fish and Wildlife Office, 4701 North Torrey Pines Drive, Las Vegas, NV 89130 (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background Information

Section 9 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take”

means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize the take of federally listed species, provided the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicant will develop a habitat conservation plan and ensure that adequate funding for the plan will be provided;

4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the habitat conservation plan.

The applicant is seeking a permit with a 4-year term for the incidental take of the Mojave desert tortoise (*Gopherus agassizii*). The applicant purchased a 120-acre parcel of property, immediately adjacent to their existing raceway facility, from the Bureau of Land Management (BLM) by modified competitive sealed-bid sale on May 7, 2012. The purpose of the acquisition was to expand the raceway by extending the racetrack and adding additional facilities on the property. The public sale of the parcel was in conformance with the BLM's Las Vegas Resource Management Plan (RMP), approved by record of decision on October 5, 1998. The applicant proposes to carry out construction activities associated with the expansion of the raceway on the 120-acre property. Construction of the raceway expansion area would include grading and leveling of soil and other earth-moving activities; removal of vegetation; construction of the new racetrack; construction of buildings and parking lots; construction of flood control facilities; installation of utilities such as power, phone, internet, sewer, and water lines; and improvement and/or widening of adjacent roadways. The entire 120-acre parcel would be developed, resulting in the incidental take of all desert tortoises that may occupy the site and the permanent loss of 120 acres of desert tortoise habitat.

To avoid, minimize, and mitigate adverse effects to desert tortoise from the construction of the proposed raceway expansion project, the applicant proposes to fully implement the conservation measures described in the HCP. Conservation measures include: (1) Fencing the perimeter of the project area with desert tortoise-proof fencing; (2) surveying and removing all desert tortoises from the property by qualified desert tortoise biologists prior to the commencement of surface disturbing activities; (3) educating construction workers, employees, and customers on the status of the tortoise and measures that can be implemented to minimize impacts to tortoise; (4) ensuring trash and food items are disposed of properly to avoid attracting predators; and (5) providing funding in the amount of \$550 per acre of habitat disturbed to the Desert Tortoise Conservation Center in Clark County, Nevada, to support development and implementation of conservation and recovery actions for the tortoise under the guidance of the Service's Desert Tortoise Recovery Office in Reno, Nevada.

Alternatives

Our proposed action is approving the applicant's HCP and issuing an incidental take permit for the applicant's covered activities. As required by the Act, the applicant's HCP considers alternatives to the take expected under the proposed action. The HCP considers the environmental consequences of one alternative to the proposed action, the No-Action Alternative. Under the No-Action Alternative, we would not issue a permit, incidental take of desert tortoise associated with development of the Spring Mountain

Raceway Expansion project would not be authorized, and minimization and mitigation measures proposed by the applicant would not be implemented. The No-Action Alternative is considered infeasible because the property was identified for disposal under the BLM's RMP, the applicant purchased the property from the BLM for the sole purpose of expanding an existing raceway facility, and desert tortoise habitat occurs throughout the 120-acre property; therefore, development could not move forward without affecting the tortoise.

Under the Proposed-Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the covered activities described above. The Proposed-Action Alternative would permanently disturb 120 acres of desert tortoise habitat that occurs adjacent to an existing raceway and is bounded on the south by a highway. To minimize and mitigate for these effects, the applicant proposes to implement the conservation measures described above and in the applicant's HCP.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed HCP and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321-4347 *et seq.*), as provided by NEPA implementing regulations in the Code of Federal Regulations (40 CFR 1500.5(k), 1507.3(b)(2), 1508.4), by Department of Interior regulations (43 CFR 46.205, 46.210, 46.215), and by the Department of the Interior Manual (516 DM 3 and 516 DM 8). Our

EAS determined that the proposed HCP qualifies as a “low-effect” habitat conservation plan, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. If you wish to comment on the permit application, EAS, or proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. If we determine that the requirements are met, we will issue an incidental take permit under section 10(a)(1)(B) of the Act to the applicant for take of the desert tortoise, incidental to otherwise lawful activities in

accordance with the terms of the permit. We will make the final permit decision no sooner than 30 days after the date of this notice, and will fully consider all comments we receive during the comment period.

Authority

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6).

Dated: November 20, 2012

**Edward D. Koch
State Supervisor
Nevada Fish and Wildlife Office
Reno, Nevada**

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